(18)

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH: HON. MR. L.C. BHADOO &
HON. MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.22 OF 2002

APPELLANT (In Jail)		Ludu Ram
	Vs	
RESPONDENT		State of Chhattisgarh.

JUDGMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

HON'BLE MR. L.C. BHADOO, J

Sd/-
L.C.BHADOO
Judge

POST FOR JUDGMENT ON 3rd May, 2007

Sd/-
2.5.2007

(19)

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HON. MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.22 OF 2002

APPELLANT (In Jail)	Ludu Ram, Age 26 Yrs, S/o Sahdeo Muria, Caste Muria, R/o Village Lamker, P.S. Bhanpur, District Bastar C.G.
Vs	
RESPONDENT	State of Chhattisgarh, through S.I., Jagdalpur, Chhattisgarh

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Present:

Mr. Ram Krishna Sharma, Advocate for appellant.

Mr. Ashish Shukla, Additional Public Prosecutor for the State/respondent.

J U D G M E N T

(Delivered on 3.5.2007)

Per Dhirendra Mishra, J:

1. The appellant has preferred this appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter shall be called 'the Cr.P.C.') against the judgment dated 28.11.2001 passed by learned 4th Additional Sessions Judge, Jagdalpur (Bastar) in S.T. No.343/2000 whereby learned Additional Sessions Judge after holding the appellant guilty of causing death of his son Sukhram, has convicted him under Section 302 of the Indian Penal Code and sentenced to undergo R.I. for life and to pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for two months.

2. The case of the prosecution, as unfolded from the First Information Report of Ex.P-5, is that Shri Jeevan B. Bhalekar, T.I., Police Station Jagdalpur after merg enquiry lodged the report on 6.6.2000 at about 1635 hrs to the effect that on 3.6.2000 in the morning, the mother of deceased Sukhram gave the deceased in the lap of her husband as

she was washing clothes. The deceased and her husband both went somewhere, she searched them from morning till evening, however, she came to know in the evening that her son is lying dead in a well and Lutu is missing. The well is half kilometer away from her home. It appears that Lutu has thrown the child in the well. Suspect Lutu could not be traced on search. All the places where he was expected, were searched, however, his whereabouts could not be traced. Luturam with an intention to cause death of the child has thrown her child in the well as a result of which Sukhram died.

3. Prior to FIR (Ex.P-5), Lalchand Sharma gave merg intimation of Ex.P-3 on 3.6.2000 at about 1645 hrs to the effect that he went to the field behind his house and saw the dead body of a boy aged about $2\frac{1}{2}$ to 3 years floating in the well situated in his field. Police reached the spot and inquest over the dead body of Sukhram was performed in the presence of the witnesses vide Ex.P-4. Body was sent for autopsy where Dr. V.K. Jha (PW-1) conducted the postmortem examination and submitted his report Ex.P-2. He found eight anti mortem abrasions on the middle of occipital region of skull, right parieto occipital region of skull, frontal surface of left wrist, thenar eminence on left hand, on the middle of left hand palm, MC region dorsum hand (left). On internal examination one haematoma with clotted blood on the central occipital region, clotted blood from parieto occipital region was oozing out, subarcachnoid, subdural & subpial haemorrhages, blood clots were present in the brain membrane, lungs congested, white froth was present in the trachea, inner surface was congested, both the lungs were swollen, stomach and intestines were full of water, spleen was contested and there is kidney failure. Injuries No.1 & 2 were sufficient to cause death, as they were grievous. He opined that the cause of death was asphyxia due to drowning and death occurred within 24 hours of postmortem examination. Investigating Officer prepared the spot map of Ex.P-6. The appellant was also sent for

medical examination on 13.6.2000 and MLC report is Ex.P-10. The appellant was arrested on 12.6.2000 vide arrest memo Ex.P-11.

4. After completing investigation, charge sheet was filed against the appellant in the Court of Chief Judicial Magistrate Jagdalpur, who in turn committed the case to the Court of Sessions Judge, Jagdalpur and the same was received on transfer for trial by learned Additional Sessions Judge, who framed charge under Section 302 of the IPC against the accused. The appellant abjured his guilt. The prosecution in order to establish the charge against the accused examined 10 witnesses in all. Statement of accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication. After hearing learned counsel for the respective parties, learned Additional Sessions Judge convicted and sentenced the appellant, as described above.

5. Learned trial court on the basis of the statement of Tilo Bai (PW-5), wife of appellant & mother of deceased, who has stated that the deceased was not able to walk, he could walk with the help of wall, the well was at a distance of half kilometer from her house and it was not possible for the deceased to reach up to the well and fall in the well and since in the fateful morning she had seen the deceased alive in the company of the appellant and the appellant has not explained as to how the child reached near the well and where he had gone with the child in the morning, has arrived at the conclusion that the death of child was not accidental but it was homicidal.

6. Learned counsel for the appellant submits that on the basis of evidence of last seen, particularly when the appellant is father of the deceased and he was seen with the deceased by the mother, it cannot be presumed that the appellant took the child and threw him in the well with an intention to cause his death. It is argued that the child was able to walk with the support of wall, even otherwise, he could

crawl on knee and therefore, the conclusion of the trial court that the child could not reach the well situated at a distance of 500 meters on his own is incorrect.

7. The other circumstantial evidence relied upon by the trial court are as under:-

   a. Tilo Bai (PW-5) has stated that she saw Luturam going outside with the child and thereafter the appellant was absconding till 12.6.2000 when he tried to flee after seeing the police and fell on the ground on being chased and sustained injuries which were examined by PW-9 and injuries found on the persons of accused were proved vide Ex.P-10.

   b. Tilo Bai went in the search of the child to the hotel where Luturam worked and there she was told that the accused had not turned up to his work place on that day.

8. On the basis of above evidence of Tilo Bai, the court below has held that in the morning the deceased was seen alive in the company of the appellant for the last time and thereafter his dead body was found floating in the well. In Paragraph 16 of the impugned judgment it has been held that the motive has been established from the statement of Phoolsingh (PW-8), cousin brother of Tilo Bai, who has stated that he had given this statement (Ex.P-10) to the police that the deceased was sick since so many days, he was not responding to the treatment, the appellant was puzzled and thought of killing him and on 3.6.2000 at about 5-6 a.m. took the child to the well situated behind the house of Gill Sardar and had thrown him in the well. Thus the appellant wanted to get rid of sick child as he was puzzled and therefore, the motive for the crime is established.

9. Learned counsel for the appellant submits that the prosecution has not been able to establish the motive, as the above finding is based on the statement of hostile witness. Statement of PW-8 Phoolsingh does not inspire evidence as in the cross-examination on behalf of the

accused he has categorically stated that the police did not interrogate him. He also claims to have seen the appellant working in the hotel just 8-9 days after the incident. Therefore, in absence of motive only because Tilo Bai has stated that the appellant went carrying deceased in the morning and thereafter dead body of the deceased was found in the well, it cannot be inferred that the appellant had thrown the child in the well to get rid of him.

10. On the other hand, learned Additional Public Prosecutor for the State supports the judgment of the trial court.

11. We have heard learned counsel for the parties and perused the record as also the impugned judgment.

12. We have detailed the circumstances on the basis of which the appellant has been convicted. PW-3 Laxminath & PW-4 Saradi are landlords in whose house the appellant resided as a tenant and worked in the hotel for his livelihood. PW-3 Laxminath has stated that the appellant came to their house as a tenant just before 15 days. On the date of incident appellant's wife told that her husband has taken her child and has not returned. He searched and in that process went to the shop where he was informed that the appellant has not come to his work. He searched him to various places but neither the accused nor his child could be traced. Ultimately at about 4.00 p.m. the nephew of Gill took him to the well where he identified the child to be the child of his tenant. He narrated this fact to Tilo Bai and by that time the police had taken out the dead body and took it for postmortem. Accused went somewhere and did not return thereafter and later on, he found the accused in Samosa shop.

13. PW-4 Saradi, is also witness of fact that Tilo bai informed him that her child has gone with Luturam in the evening, they all went to search the child but they could not trace and in the second day morning the body was found floating in the well near Samund. The accused was hiding for eight days when he was found in a hotel near

Chitrakot Road. In the cross-examination this witness has admitted that Luturam some time came back to his home and some time he did not come. It is true to say that accused returned home in 4-5 days, as he worked in some other place. It is also incorrect to say that it is just possible that he might not have heard about the missing of child and therefore, he might have not come back.

14. PW-5 Tilo Bai has stated that her child Sukhram was one year old, he was not able to walk without support, her husband worked in a hotel, he went at about 5.00 a.m. with the child somewhere, in the night she, her child and husband were together in the house, she made enquiry from the hotel where Luturam worked but he had not gone to the hotel on that day, she searched for the child till evening and told the same to the neighbourers. When she learnt that a child has been found in the well and taken to the hospital for postmortem, she went to see the child. The well is half kilometer away from her house. Her husband might have thrown the child in the well and thereafter absconded and did not return home. He was arrested by the police. She has admitted the suggestion that the child was able to crawl through knee. It is incorrect to say that her husband did not return home for 4-5 days from work.

15. From the evidence available on record it is established that the child was last seen alive in the company of the appellant in the morning of incident, thereafter the dead body of child was found floating in the well. It is also established from the statement of Tilo Bai (PW-5), who is wife of the appellant, that after he left with the child the dead body of child was found in the evening and the appellant did not return home and she saw him only after he was arrested. There is no explanation by the appellant either by way of cross-examining the witnesses or in his statement under Section 313 of Cr.P.C. as to what happened after he left his home with the child. There is also no explanation as to why he did not return home till he was arrested on 12.6.2000. If the evidence available on record is put together i.e.

going of the child with the accused in the morning, child aged about one year was not able to walk without support, location of well, which is 500 meters away from the house, conduct of the appellant in not explaining the circumstances that what happened when he left the house in the morning and reasons for not returning the home till he was arrested by the police and further finding the dead body of the deceased in the well situated at about half kilometer away from the house of appellant with numerous injuries over the person of deceased are the circumstances which leads to irresistible conclusion that the appellant had thrown the child in the well and thereby caused his death. There is no reason for the wife of the appellant to implicate her own husband in a false charge that too of a murder of his own child. The circumstances relied upon by the prosecution for convicting and sentencing the appellant is based on the evidence available on record, which calls for no interference by this Court.

16. In the result, we do not find any illegality or infirmity in the judgment of the trial court and the appeal filed by the appellant being devoid of any substance is liable to be dismissed and the same is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-